

EXHIBIT

A

## Shelby County Board of Education

7002

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10/27/15; 09/25/12

# REAL ESTATE

## I. PURPOSE

To ensure that district-owned real estate, including school and administrative facilities, is managed in a manner that is consistent with educational, operational, community-wide and neighborhood goals; and to ensure that the closure of District authorized priority charter schools are in accordance with applicable State statutes.

## II. SCOPE

This policy applies to the acquisition, disposition, maintenance, use and operation of district-owned real estate; and to the closure of District authorized charter schools whose charter agreement is revoked or denied renewal upon identification as a priority school by the State Department of Education.

## III. DEFINITIONS

Real Estate, including school and administrative facilities, is real property, land and/or anything permanently affixed to the land, such as buildings, fences and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other items which would be personal property if not attached.

Repurposed Real Property is district-owned real estate that is converted to purposes other than or in addition to its original educational or operational use, either jointly or by a district-authorized charter school or non-district entity (i.e. ASD/ASD authorized operators, community organization, etc.).

- a. Joint Use - a type of repurposing which utilizes school facilities and/or land for Pre- K-12 education and/or other academic and non-academic services. It involves an agreement (i.e. rental permits, lease agreements or MOA) between

the district and other public and/or private entities where facilities, land, utilities, or other common elements are shared between two or more parties on site to address specific local needs by sharing resources and responsibilities to create a unique joint use program and/or facility. Examples include Community Schools, adult-education programs, ASD authorized co-location charter schools, family services, health clinics and before and after-care.

b. Adaptive Reuse - a type of repurposing that uses district-owned real estate and/or land for public *non-academic* purposes or community/neighborhood development. It involves an agreement (i.e. rental permits, lease agreements or MOA) between the district and other public and/or private entities. Examples include community centers, libraries, affordable housing, community gardens, or businesses.

District-Purposed Real Property is district-owned property used solely for district educational or operational needs.

Surplus Real Property is any real estate that is no longer required by the district to fulfill current or anticipated capacity needs including, but not limited to future programmatic, academic, or administrative capacity needs and/or is no longer required for any identified alternative (repurposed) use.

Lease is a contract for the conveyance of exclusive possession of real property for a fixed period of time in consideration of the payment of rent.

Rental is a contract for the use of a facility for a short period of time that conveys no right or interest in the real property.

Assessed Value is the current dollar amount which the Shelby County Property Assessor assigns as the worth of the land and improvements for taxation purposes.

Fair Market Value is the highest price in terms of money which a property will bring in an open and competitive market under all conditions requisite to a fair sale (the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue circumstances).

Capacity Utilization is the number of students which can be accommodated in a school given the school-specific educational programs, other district programs, administrative uses, class schedules, student-teacher ratios, the size of the rooms, and other factors as deemed necessary. For example, the utilization rate is a factor used to determine if the facility is being used at its optimal capacity. The utilization rate of a facility is calculated by dividing the current or projected enrollment of the educational facility by the programmatic capacity.

## **IV. POLICY STATEMENT**

The Board believes that educational facilities in communities should be utilized to educate children, to enhance access to public services and to promote community development. Construction and use of real estate, including school and administrative facilities are essential to students' academic achievement as well as to the growth and development of the Shelby County community and its neighborhoods. Adequately maintained and appropriately constructed facilities improve school climate and adapt to the educational and instructional needs of students, helping them to perform at their maximum capacity. For example, an elementary school, a performing arts school, or a Pre-K program all are constructed to improve the academic performance of specific populations of students. Additionally, education is just one of many public services essential to the development of a community/neighborhood (hereafter referred to as community) and use of facilities is interconnected with access to these services. Accessible transportation, housing, health care, libraries, and recreational centers, for example, may be enhanced because of the location or use of district-owned facilities in a neighborhood. Finally, district-owned facilities not used for education, administrative, or other public service purposes can enhance a community through other beneficial uses of the buildings by community residents, organizations, and businesses provided that such use by the community does not create any adverse financial impact for the district.

Since district-owned facilities are community institutions, public involvement in the decision to construct, renovate, close, repurpose, consolidate, sell, or transfer real estate is critical to building public acceptance and ensuring efficient use of district-owned facilities. Therefore, the Board shall solicit input from the public before making these decisions. Members of the public can include community planning agencies, community residents, community development corporations, businesses, and faith-based institutions. The Board encourages cooperative planning with government planning agencies in order to ensure consistency in goals for the growth and development of the community and to ensure efficient and cost-effective planning and funding.

### **A. New Construction/Renovations**

The Board shall direct the Superintendent to conduct a long-range needs assessment for construction/renovation of school facilities that is based on accomplishing the academic plans for the district. The academic plans shall consider the educational needs of the community and/or specific neighborhoods. This needs assessment shall include a review of each school site. The needs assessment shall be coordinated with input from central office staff and other entities responsible for community planning as applicable. Based on the needs

assessment, the district shall develop a Five-Year Comprehensive/Capital Plan. The Board shall review and approve recommendations for new construction/renovation of school facilities.

The renovation/construction of facilities intended for administrative purposes shall be in accordance with applicable federal, state, and local laws.

## **B. Closing School Facilities**

The Board or Superintendent may recommend that an analysis be conducted for consideration of the closure and alternative use or disposal of school facilities. Factors to be considered shall include, but not limited to, declining enrollments, population shifts, realignments of educational programs, facility condition/building obsolescence, capacity utilization, potential short and long term fiscal impacts to the district and/or County Government, and any other reasons deemed appropriate by the administration and/or Board when determining closure and the alternative use or disposal of school facilities. If, based on analysis, it is determined that schools should be closed the Superintendent shall make the recommendation to the Board for appropriate action (e.g., consolidation, repurposing, selling, transferring, and/or otherwise disposing of the property) before the end of the second quarter of the prior school year, unless extenuating circumstances exist. Prior to closing any school facility, the administration shall submit a School Closing Impact Report to the Board of Commissioners that shall provide (1) a rationale for closing the facility, and (2) a preliminary proposal for repurposing (e.g. lease), selling, transferring, subdividing, exchanging or otherwise disposing of the facility.

### **1. Rationale for Closing the School Facility**

The Impact Report shall include the following:

- a. An explanation of why the school facility should be closed and the academic impact on the affected students.
- b. An analysis of the impact of the closing on students, teachers, parents, and the neighborhood.

Except in extenuating circumstances, the Board must conduct a minimum of two (2) public hearings for citizen input on the proposed plan to close a school facility. Public hearings must be held no later than Feb 28th of the prior school year. After the hearings, the Superintendent shall submit a Final School Closing Impact Report.

## **2. Preliminary Proposal for Closed School Facilities**

The School Closing Impact Report shall include a preliminary proposal setting forth the administration's recommendation to use the school facility for other district purposes or to consolidate, repurpose, sell, transfer, subdivide, exchange or otherwise dispose of the school facility. The final proposal regarding the facility must be submitted before the end of the school year in which the district's proposed use was made, unless extenuating circumstances exist.

### Final Proposal

- a. If the school will remain as district-purposed property, the Superintendent, depending on the use, shall apprise the Board of the intended use or obtain Board approval for its use when such approval is required by state law or Board policy. (No written proposal is needed if Board approval is not required.)
- b. If the final proposal includes a recommendation to consolidate, district officials must provide an explanation of the educational and any other benefit of consolidating the educational programs.
- c. If the final proposal includes a recommendation to repurpose (e.g. lease) a school facility either through joint use or adaptive reuse, district officials must provide an explanation and narrative outlining the steps undertaken to conduct a community needs assessment and, where appropriate, obtain community input from planning and community organizations prior to making the recommendation to repurpose the facility.
- d. If the final proposal includes a recommendation to sell, transfer, subdivide, exchange, or otherwise dispose of a school facility, district officials must provide an explanation of the benefit to the district and the community.

The closure and/or repurposing of facilities solely used for administrative purposes shall be exempt from these provisions.

## **C. Charter Schools Identified as Priority Schools**

Pursuant to State law, any District authorized charter school identified as a priority school under the State accountability system shall be closed at the end of the school year without eligibility to appeal. Official action by the Board to revoke or deny renewal of the charters of such schools shall begin within thirty (30) days

from receipt of notification from the State Department of Education of the schools' status.

#### **D. Real Estate Transactions**

The Board is authorized to acquire and dispose of real estate, including school and administrative facilities, for the district in a manner deemed by the Board to be in the best interest of the school system and the community it serves, including selling or leasing to generate revenue for the district. It is the Board's intent to provide adequate facilities to meet instructional needs of the students and staff, to provide for school activities, and to serve the community of which the school shall be an integral part. The acquisition and disposal of real estate, including school and administrative facilities and vacant land, may be achieved through purchase, sale, lease, donation, division, transfer and/or exchange. If the administration believes that a real estate transaction is appropriate, the Superintendent will make the recommendation to the Board for appropriate action. All recommendations shall be accompanied with a written justification aligned with the district's long-range strategic plan for student achievement and the Capital/Comprehensive Plan.

##### **1. Purchase**

The purchase of real estate, including school and administrative facilities and vacant land, by the district shall be in accordance with the strategic plan for student achievement, the long-range Capital/Comprehensive Plan, State law, and local ordinances and regulations including zoning and subdivision.

##### **2. Sale**

The sale of real estate, including school and administrative facilities, shall be in accordance with the district's long-range Capital/Comprehensive Plan, State law and local ordinances and regulations including zoning and subdivision. Real estate that is no longer required by the district to fulfill current or anticipated capacity needs including, but not limited to, future programmatic, academic, or administrative capacity needs and/or is no longer required for any identified alternative (repurposed) use will be considered for sale only after it has been determined that the sale of the facility is more beneficial to the district than repurposing it to some other public or community use.

The Board is, therefore, authorized to sell any real estate, including school and administrative facilities and vacant land, to which it has title at a public sale or a negotiated sale after the Board has declared the property as surplus in accordance with State law and as provided in the Administrative Rules and

Regulations - Declaration of District-Owned Real Estate as Surplus.  
Additionally, a recommendation to sell surplus real estate may be provided by the Superintendent. The Board, however, shall make the final decision whether to sell district-owned surplus real estate.

a. Valuation of Real Estate -

Real estate considered for sale by the district shall be subject to a minimum of one appraisal from a disinterested qualified appraiser to determine the market value. The appraisal shall be waived in cases of non-complex sales in which the assessed value of the real estate can be estimated by the district to be less than \$100,000 based in part on values provided by the property assessor. This provision shall not preclude a prospective buyer from securing an appraisal from a disinterested qualified appraiser, provided the full cost of the appraisal is paid by the prospective buyer.

b. Public Sale -

The sale of district-owned real estate may be by public sale. The public sale shall be in accordance with State law, which includes conducting a sale by Internet Auction.

c. Negotiated Sale -

If, in the opinion of a majority of the Board, a negotiated sale will realize the best price obtainable for any real estate, the Board shall first advertise in a newspaper of general circulation in the county that the property is for sale. For purposes of this policy, negotiated sales include unsolicited offers to buy real estate. A negotiated sale shall not be completed until thirty (30) days after the publication of legal notice. The Board shall by a majority vote of the members at a special called or regular business meeting approve and record the price and name of the purchaser of any property so sold.

Nothing in this policy shall prohibit the Board from determining which bidder has presented the highest and best bid for a particular property, from determining that all bids should be canceled and any appropriate further action be taken, or from making any other lawful determination with respect to the sale of the particular property.

*Selling Below Fair Market Value*

When district-owned real estate is sold below fair market value and/or an appraised value, any cost and fees related to closing shall be the responsibility of the buyer. Such costs and fees shall include, but are not limited to, attorney fees, assessments, property valuations, title searches,

preparation of deeds, recording fees, and any other miscellaneous costs and fees associated with the property closing.

**3. Donation**

Real estate, including school and administrative facilities and vacant land, donated to or donated by the district shall be accepted or given in accordance with the district's policy/guidelines, State law, local ordinances and regulations, including zoning and subdivision, and Board Policy. Real estate to which the district has title may be donated after the Board has declared the real estate as surplus. Due diligence shall be given to evaluating the usefulness of the real estate prior to acceptance or donation of the real estate.

**4. Subdivision/ Exchange**

The subdivision/ exchange of real estate, including school and administrative facilities and vacant land, by and/or to the district shall be in accordance with the district's policy/guidelines, State law, and local ordinances and regulations, including zoning and subdivision. The Board, in accordance with applicable State law, may at its discretion, subdivide/exchange surplus real estate, as defined by policy.

**5. Transfer**

The transfer of real estate, including school and administrative facilities and vacant land, by and/or to the district shall be in accordance with the district's Capital/Comprehensive Plan, State law, and local ordinances and regulations including zoning and subdivision. The Board, in accordance with applicable State law, may at its discretion, transfer surplus real estate, as defined by policy, to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale.

**6. Use of Educational and Administrative Facilities**

**a. Community (non-profit) and Governmental Entities**

Educational and administrative facilities are public facilities that meet the academic needs of students and the public service or community development needs of communities. When facilities are not being used by the school system, the Board supports their use by community (non-profit) and governmental entities. Non-profit entities shall be required to provide a

ruling letter from the Internal Revenue Service or satisfactory evidence issued by the State that it is a nonprofit organization.

Short and long-term agreements authorized prior to July 1, 2013 shall be allowed to remain in full force and effect until the expiration date provided in the agreement.

(i) Short-Term Rental of Educational and Administrative Facilities

The Board authorizes the Superintendent to enter into agreements for the short-term rental of its facilities as deemed by the Board to be in the best interest of the district and community when facilities are not being used for school purposes. School or school-related activities shall be given priority in the use of all facilities. School property may normally be used for the following purposes:

- Activities sponsored by other governmental agencies
- Lectures; Musical programs
- Recreational programs sponsored by municipalities or other non-profit organizations
- Scouting activities; Religious Services
- Non-profit charitable fund raising
- Programs sponsored by service clubs
- Non-Partisan political public forums sponsored by a recognized non-profit community or civic group

Although facilities are available for short-term rental by community agencies and groups, programs operated by the school system take precedence in the use of facilities, some limitations and exceptions to the use of Board facilities shall apply, including adherence to local ordinances and regulations. Board facilities shall not be approved for:

- Any purpose/activities that conflicts or interferes with the district's use of the facility for its activities or programs, or disrupts district business.
- Meetings or activities for which district personnel cannot be scheduled. All facilities are subject to availability of personnel.
- Any purpose in violation of local, state, or federal laws, statutes, ordinances, or regulations.
- Meetings/activities/events involving the preparation or service of food in district controlled or operated kitchens or cafeterias unless provided by the district's food safety-trained school food personnel or

the food is served by an approved catering firm outside the kitchen area and the district personnel necessary to clean the area are on duty and contracted by the user.

- Any purpose/activities that involves gambling in any form
- Programs sponsored by for-profit organization that are not school affiliated
- Private use (i.e., parties, receptions, celebrations, family reunions, funerals/memorials)

*Time, Place, and Manner*

While the district shall not discriminate on the basis of its viewpoints when making facilities available for community use, the Board shall (1) adhere to applicable federal/state laws and local ordinances and regulations; and (2) reserve the right to impose reasonable, content-neutral restrictions on the time (i.e., specific time and/or day), place (i.e., location), and manner (i.e., activities) of use of district facilities.

The following are parameters for the time, place, and manner of activities:

- The activity does not unduly disrupt traffic, either vehicular or pedestrian.
- The activity does not create unreasonable safety risks.
- The activity does not use unauthorized sound amplification equipment or create unreasonable noise disruption.
- No event may exceed 8 hours in length in a 24-hour period.
- The location will be left in its original condition at the conclusion of the event, and reasonable charges or deposits may be imposed to enforce this requirement.
- Expression that is obscene, defamatory, or consists of fighting words, threats of physical harm, insightful of imminent lawless action or otherwise not entitled to protection as expression is not permitted.

The Board, in authorizing the short-term rental of any facility, does not in itself express or imply that it endorses or embraces the purposes, goals, or objectives of the group or organization but rather indicates its willingness to provide space for community or public purposes when not being used by the school district.

The Board, in making its facilities available to the community, does incur certain expenses for custodial services, utilities, and general maintenance of the building. Therefore, fees may be charged in

accordance with a fee schedule established by the Superintendent or designee for the rental of facilities. Additionally, a written contract shall be required for the rental of Board facilities. The group or organization renting Board facilities shall agree in writing to be responsible for the supervision of the activity and the conduct of persons present and to indemnify and hold harmless the Board and its employees from and against any and all losses, claims, demands, and liabilities which arise in connection with the use of the premises.

(ii) Long-Term Lease of Facilities

The lease of educational and administrative facilities/real estate shall be in accordance with State law, local ordinances and regulations including zoning and subdivision, and applicable Board policy and Administrative Rules and Regulations.

b. Charter Schools

The district may enter into a lease agreement with a charter school for use of properties identified by the district as underutilized and/or vacant. Such agreements shall be in compliance with State law and shall not reflect any outstanding bonded debt on the underutilized or vacant property, except as agreed upon to reflect any necessary costs associated with the occupation or remodeling of the facility.

c. Tennessee Achievement School District (ASD)

The district shall enter into a Memorandum of Understanding (MOU) with the ASD for the use of schools under the jurisdiction of the ASD. In accordance with State law, the use of facilities by the ASD, including a school or grade configuration directly operated by the ASD or individual(s), governmental entities, or non-profit entities under contract with the ASD, shall be free of charge. The ASD shall, however, be required to assume responsibility for the routine maintenance and repair of facilities and for paying utilities.

7. Facilities Management Information System

The district shall maintain an educational and administrative facilities and real estate management information system that contains adequate, comprehensive and current information about district facilities and land inventory, condition, design and utilization.

## **V. RESPONSIBILITY**

- A. Designated executive staff responsible for planning is responsible for coordinating needs assessments of school sites and preparing the Five-Year Capital/Comprehensive Plan.
- B. Designated executive staff responsible for planning, policy and community relations are responsible for conducting needs assessments and coordinating planning meetings with community planning agencies, community and neighborhood residents, community development corporations and faith-based institutions.
- C. The Department of Finance is responsible for conducting an analysis of the fiscal impact of proposed real estate and educational facilities transactions.
- D. The Superintendent is responsible for:
  - 1. The maintenance of an educational facilities and real estate management information system that contains adequate, comprehensive, and current information about district facilities and land inventory, condition, design and utilization;
  - 2. Annually providing the Board with a report of real estate, construction, and facilities management, which shall include, but is not limited to current information about district facilities and land inventory, condition, design, and utilization?
  - 3. The preparation of a long-range Capital/Comprehensive Plan for Board approval; and
  - 4. Enforcing this policy.

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Legal References:

1. TCA 49-6-2006
2. TCA 49-2-203(C)(i)
3. TCA 49-13-136
4. TCA 49-1-614

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Cross References: